

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRIAN K. BARNER,)	
)	
Plaintiff,)	
v.)	Civil Action No. 07-98 Erie
)	
H.J. MARBERRY, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This civil rights action was commenced on May 4, 2007 and was referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Chief Magistrate Judge's report and recommendation [38], filed on June 30, 2008, recommends that the Defendants' motion to dismiss or, in the alternative, for summary judgment [24] be granted. The parties were allowed ten (10) days in which to file objections. Service was made on Plaintiff by certified mail at the Allenwood Medium Federal Correctional Institution in White Deer, Pennsylvania, where he is incarcerated, and on the Defendants. No objections were filed.

After de novo review of the Complaint and the documents in the case, together with the Report and Recommendation and Plaintiff's objections thereto, the following order is entered:

AND NOW, this 18th Day of August, 2008, IT IS HEREBY ORDERED that the Defendants' motion to dismiss or, in the alternative, for summary judgment [24] be, and hereby is, GRANTED.

The report and recommendation of Chief Magistrate Judge Baxter filed on June 30, 2008 [38] is adopted as the opinion of this Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

cm: all parties of record
Chief U.S. Magistrate Judge Susan Paradise Baxter